



State of New Hampshire  
DEPARTMENT OF ENVIRONMENTAL SERVICES

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(603) 271-3503 FAX (603) 271-2867



In re: C. William Johnson

3 Little Rob Road  
Atkinson, NH

NOTICE OF DECISION ON  
MOTION FOR RECONSIDERATION

Administrative Fine No. AF 02-013

**Background**

On March 19, 2002, the Water Division ("the Division") issued a Notice of Proposed Administrative Fine No. 02-013 ("the Notice") to C. William Johnson for violations of RSA 482-A, the state wetlands statute, arising from dredging and filling in wetlands on his property located at 3 Little Rob Road, Atkinson, NH ("the Property"). The Division sought five fines totaling \$5,500.

The hearing was held on March 3, 2003. The Notice of Decision ("the Decision") was issued on March 24, 2003, and imposed the following fines against Mr. Johnson:

- ▶ A fine in the amount of \$1,000 was imposed for dredging and filling approximately 5,000 square feet of jurisdictional area without a permit from DES.
- ▶ A fine in the amount of \$1,500 was imposed for dredging a 150' x 100' pond without a permit from DES.
- ▶ A fine in the amount of \$2,000 was imposed for dredging and filling approximately 400 linear feet of a perennial stream without a permit from DES.
- ▶ A fine in the amount of \$500 was imposed for dredging approximately 300 square feet of jurisdictional area surrounding an old dam on the Property without a permit from DES.
- ▶ A fine in the amount of \$500 was imposed for dredging and filling approximately 200 square feet of jurisdictional area surrounding a culvert on the Property without a permit from DES.

The total fine imposed was \$5,500.

Mr. Johnson timely filed a motion for reconsideration ("the Motion") on April 23, 2003. The Division filed a response ("the Response") on May 9, 2003.

## **Discussion**

### **The Violation**

In the Decision, a fine was imposed against Mr. Johnson for violating RSA 482-A:3, I and RSA 482-A:14, III by dredging and filling in jurisdictional wetlands without first obtaining a permit from DES.

RSA 482-A:3, I provides that a person shall not excavate, remove, fill, dredge, or construct structures in a wetlands without a permit from DES. Under RSA 482-A, the Property is a jurisdictional wetlands. In order to prove a violation of RSA 482-A:3, I and RSA 482-A:14, III, the Division must prove by a preponderance of the evidence that Mr. Johnson dredged and filled in wetlands on the Property without first obtaining a permit from DES.

In the Motion, Mr. Johnson stated that when DES inspected the Property on September 11, 2001, staff informed him that the work conducted in the wetlands "was all right, but required a permit." At that time, staff told him that he would have to attend a hearing. Subsequently, Mr. Johnson met with DES staff who suggested that he hire an environmental engineer. He hired Seekamp Environmental Consulting, Inc. ("Seekamp Environmental") to address the wetlands issues on the Property and it was his understanding that Seekamp Environmental was working with DES to resolve the problems. It was only after he received the Decision, that he contacted Seekamp Environmental and learned that they did nothing even though he paid them to obtain a wetlands permit. Mr. Johnson stated that he did not intend to disturb the wetlands and wishes to restore the pond. (*Motion*)

In the Response, the Division noted that by letter dated November 8, 2002, Michael Seekamp of Seekamp Environmental, on behalf of Mr. Johnson, requested an informal meeting to discuss the matter. By letter dated November 14, 2002, DES informed Mr. Seekamp that it would meet with him and Mr. Johnson to discuss the matter. Mr. Seekamp never contacted DES to set up a meeting. (*Paragraphs 6 and 7, Response*)

It appears that Mr. Johnson is arguing that the fine should not be imposed because his consultant, Seekamp Environmental, failed to obtain a wetlands permit. The record shows that he hired Seekamp Environmental to address wetlands issues on the Property. It appears that Mr. Johnson may have relied on Seekamp Environmental to obtain a wetlands permit. However, having received the Notice of Proposed Fine and Hearing and the subsequent Notice of Hearing, he was aware that the violations had not been addressed. Ultimately, Mr. Johnson is responsible for ensuring that the wetlands issues were addressed.

### **The Notice of Hearing**

In the Motion, Mr. Johnson claims that he never received notice of the March 3, 2003

hearing. (Motion)

In the Response, the Division asserts that Mr. Johnson was properly notified of the hearing by certified letter dated January 16, 2003, sent to Mr. Johnson's address at 3 Little Rob Road, Atkinson, NH 03811. The return receipt showed that on January 29, 2003, the letter was delivered to this address and signed for by Susan Johnson. In addition, DES telephoned Mr. Johnson on February 24 and February 27, 2003 and left messages on his answering machine reminding him of the hearing and providing him with a return telephone number. Mr. Johnson did not call back. (Paragraphs 4 and 5, Response)

The hearing was held on March 3, 2003. The record shows that Mr. Johnson was not present at the hearing, nor was anyone else present on his behalf, and he did not notify DES of the absence prior to the hearing. It was determined for the record that Mr. Johnson was properly notified of the hearing by certified letter dated January 16, 2003. The return receipt showed that on January 29, 2003, the letter was delivered to his address of record and signed for by Susan Johnson. Thus, Mr. Johnson was properly notified of the scheduled administrative fine hearing and so the hearing was held pursuant to Env-C 204.09.

In order to impose an administrative fine, the Division must prove by a preponderance of the evidence that the violations occurred. The evidence submitted at the hearing in support of the violations was fully considered in determining the imposed fine and Mr. Johnson introduced no new evidence that addresses the violations. The Division proved that Mr. Johnson dredged and filled in jurisdictional wetlands on the Property. Thus, I believe that the fine imposed is warranted.

### **Decision**

For the reasons discussed above, the Motion is denied. The total fine of \$5,500 shall be paid within 30 days of the date of this Notice of Decision on the Motion for Reconsideration. Fine payments shall be by check or money order payable to "Treasurer - State of NH" and sent to the attention of the Legal Unit, DES/Office of the Commissioner, 6 Hazen Drive, Concord, NH 03301.

So Ordered,

Date: 07 08 03

  
**COPY**

Michael P. Nolin  
Commissioner

cc: Atkinson Conservation Commission  
Atkinson Board of Selectmen  
Harry T. Stewart, P.E., Director, Water Division  
Jennifer Patterson, DOJ/EPB  
Mark Harbaugh, Enforcement Attorney  
Susan Weiss Alexant, Hearing and Rules Attorney  
Marjory Swope, NHACC